**Local 25, International Brotherhood of Electrical Workers, AFL–CIO (Spectacore Management Group a/k/a SMG) *and* Ann Marie (Minella) Bartlett.** Case 29–CB–9057

June 18, 1996

## DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING AND FOX

On December 11, 1995, Administrative Law Judge Steven Davis issued the attached decision. The Respondent and the General Counsel filed exceptions and supporting briefs, and the Respondent filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions[2] and to adopt the recommended Order.

## ORDER

The recommended Order of the administrative law judge is adopted, and the complaint is dismissed.

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] In adopting the judge's finding that the complaint is barred by Sec. 10(b) of the Act, we do not rely on his statement in the ''Analysis and Discussion'' section of his decision that ''a charge was not filed until 5 months after the August 10 revelation.''

In light of our adoption of the judge's finding that the complaint was barred by Sec. 10(b) of the Act, we find it unnecessary to pass on whether or not the Respondent's conduct violated the Act. Accordingly, we do not address the judge's discussion and findings regarding the merits of the Respondent's referral of employee Strauss.

*Elias Feuer, Esq.*, for the General Counsel.
*Richard S. Brook* and *Patricia E. Palmeri, Esqs.*, of Mineola, New York, for the Respondent.

## DECISION

### STATEMENT OF THE CASE

STEVEN DAVIS, Administrative Law Judge. Based on a charge filed on January 10, 1994, by Ann Marie (Minella) Bartlett, an Individual, and an amended charged filed by Bartlett on February 16, 1994, a complaint was issued by Region 29 of the National Labor Relations Board on May 25, 1994, alleging that Local 25, International Brotherhood of Electrical Workers, AFL–CIO (Respondent or the Union) violated Section 8(b)(1)(A) and (2) of the Act.

Specifically, the complaint alleges that Respondent unlawfully bypassed Bartlett and other members of Respondent in making a referral of employment to a light duty job, and failed and refused to refer her, and instead referred another person, Alexander Strauss, because Strauss was a member of Respondent's executive board.

Respondent's answer denied the material allegations of the complaint, and set forth certain affirmative defenses, including that the charge was not timely filed, Bartlett was physically unable to perform the work, and that the referral to Strauss was lawful. This case was heard before me in Brooklyn, New York, on 9 days in July and August 1995.[1]

On the evidence presented in this proceeding, and my observation of the demeanor of the witnesses, and after consideration of the briefs filed by the General Counsel and Respondent, I make the following

### FINDINGS OF FACT

#### I. JURISDICTION

The Nassau Veterans Memorial Coliseum, a sports arena located in East Meadow, New York, is operated under a management contract by Spectacore Management Group (SMG), whose headquarters is located in Philadelphia, Pennsylvania. SMG also manages other facilities in California, Louisiana, and Virginia. SMG receives more than $50,000 annually for the services it provides to Nassau County which owns the Coliseum, and purchases more than $50,000 annually in health insurance coverage for its employees at the Coliseum from Cigna Insurance Company which is located in Hartford, Connecticut.

SMG employs from 75 to 800 employees at various times at the Coliseum depending on the number of events produced. I find that SMG is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. Respondent admits that it is a labor organization within the meaning of Section 2(5) of the Act.

#### II. THE ALLEGED UNFAIR LABOR PRACTICES

##### A. *The Facts*

##### 1. The Referral

Respondent operates an exclusive hiring hall run by its full-time employment manager.[2] The employment manager receives calls for employees and fills them by calling employees who are on the ''slot list,'' and then those who are on the ''chronological list.''

An out-of-work electrician is first placed on the chronological list. After working for 5 consecutive days at a job referral, the individual is placed on the slot list. The slot list is a procedure whereby employees are guaranteed that they

[1] On January 30, 1995, Respondent filed a motion to dismiss the complaint, contending that the complaint was barred by Sec. 10(b) of the Act. The Board issued a Notice to Show Cause, and the General Counsel filed a response. On March 29, 1995, the Board denied the motion and remanded the matter to the Regional Director. 316 NLRB 932 (1995).

[2] Pursuant to the collective-bargaining agreement between Respondent and SMG, ''the company agrees to utilize the Union's job referral systems for hiring employees in the classifications covered by this Agreement.''

will receive a total of 120 days of work before they are placed at the bottom of the chronological list. Once an employee is on the slot list, he continues to be referred until he works 120 days. Those on the slot list are referred before those on the chronological list. The two lists are updated daily.

Bartlett, a journeyman electrician, was injured in December 1989 on a job she was performing within the jurisdiction of Local 3, International Brotherhood of Electrical Workers, AFL–CIO. She received disability payments, and beginning in late 1991, sought referrals from Respondent.

Bartlett stated that in 1991 she informed Employment Manager Andrew Bub that she was ready to return to work on a light duty basis, and had 109 days accumulated on the slot list. Bub informed her that she would be the first person referred to a light duty job.

On April 9, 1992, Bub offered Bartlett a light duty job at the Central I slip courthouse which was being renovated. She told Bub that she would consult her physician and call him back. Her physician approved her return to work, but after meeting with her psychologist that day, she decided to decline the job. Bartlett refused to accept the job because she had heard that her boyfriend's estranged wife was working at the courthouse, and she feared a confrontation. Bartlett had an outstanding order of protection against that woman, who had previously assaulted her. Bartlett told Bub that she declined the job because of her fear of that woman, and he replied that he would get her the next light duty referral. Bub wrote on her work card ''can't do light duty right now.'' Bartlett further testified that at a union meeting only 5 days later, she thanked Bub for the referral, and recounted her reason for declining it, and was told that she would get the next referral.

Bartlett testified that at a union meeting in July 1992, she told then Employment Manager John Loughney that she was awaiting a light duty job, and asked about the possibility that one job might be shared between two employees who sought light duty work. Loughney replied that such an arrangement was not very realistic, and Bartlett replied that she would be willing to share a job with another electrician.

On September 14, 1992, electrician Alexander Strauss was referred by Loughney to a light duty job at the Coliseum. It is that referral that is in dispute.

Bartlett testified that about two to three times thereafter at union meetings she told James Plant, the successor employment manager, that she was available for a light duty job. Plant told her that the employment situation was ''bleak'' but that she would be one of the first, if not the first to be referred.

### 2. Bartlett's Knowledge of the Referral

There was much testimony given by certain union members to the effect that Bartlett became aware of the September 1992 referral to Strauss almost immediately after it occurred, either through conversations directly with Bartlett, or conversations with electrician Robert Pszybylski, her boyfriend. All such testimony was denied by Bartlett and Pszybylski.

The evidence conceded by Bartlett, on which I rely, is as follows. Bartlett was a teller at two union elections of officers. The first was on June 8, 1993, and the second, a runoff, took place on June 29, 1993.

Bartlett testified that at the runoff election, she told union member Sean McKenna that the condition of her back was ''so-so'' and that she was waiting for a light duty job. McKenna replied that Strauss was working at a light duty job at the Coliseum.[3]

Bartlett testified that she did not believe McKenna, and thought that he was teasing her. Bartlett told McKenna that ''that can't be,'' adding that she had not worked since 1989, and had been waiting for a light duty job since late 1991. She also told him that all four employment managers knew that she was waiting for a light duty job, and that they knew that she had 109 days in the slot system, and that all four managers assured her that she would be the first to be referred to a light duty job.

Bartlett testified that about 1 hour later while still at the election, she was again told by two other electricians that Strauss obtained a light duty job. She stated that she did not believe them either.

Bartlett testified that at that time she could have, but did not attempt to confirm the ''rumor'' concerning Strauss' referral with plant, who was the employment manager at the time of the election, and who worked in the same building that the election was held in. Nor did she seek out prior Manager Bub, who was then an officer of Respondent, and had an office in the building. Bartlett conceded that on several occasions she was told by Business Manager William Lindsay that members should not believe rumors, and that they should speak to a union official concerning any such matters.

Bartlett phoned the union office on about July 1, 1993, and asked to speak to plant. He was not available, and she was asked if another business representative could help, or if she wished to leave a message. Bartlett refused the offers, and said she would call back.

The next time Bartlett attempted to confirm what she had heard about the referral was following the union meeting of July 13. At that time she looked for Plant but did not see him. She further stated that from July 13 to August 10, she believed that she phoned the Union a couple of times in order to speak with plant, but ''to no avail.''

Finally, Bartlett stated that she spoke with Plant at the conclusion of the August 10 union meeting, when she was told that Strauss received a light duty assignment to the Coliseum.

Bartlett stated that in October 1993, she was told by Loughney that he did not intentionally skip her name in making the assignment to Strauss, and explained that the listings of those employees on the slot list who are on long-term disability or waiting for a light duty job, as was Bartlett, are located in a separate area in the union hall and ''not readily available.'' She met with Employment Managers Loughney and Fiore and plant, and stated that she was improperly bypassed in favor of Strauss. She requested that she be credited toward her pension with the time that Strauss worked at the Coliseum. In reply, the managers showed her various notes sent by her physician to the Union in 1993 which discussed her ability to perform certain work. The managers also re-

[3] Based on credible union documentation that McKenna was not a teller at the June 29 election, I find that this conversation in fact occurred at the initial union election of June 8. However, for the purposes of this discussion, I accept Bartlett's testimony that the conversation took place on June 29.

quested that she protest the referral through an appeal with the appeals committee. Bartlett did not do so.

At the October meeting, Bartlett told the managers that she was available for light duty work and on December 1, she was referred to such a job, on which she worked until April, 1994.

### B. *Analysis and Discussion*

#### 1. The 10(b) Argument

Respondent argues that Bartlett's testimony is sufficient to establish that the charge she filed on January 10, 1994, is time-barred by Section 10(b) of the Act. I agree.

A charge must be filed and served within 6 months of the commission of the unfair labor practice, pursuant to Section 10(b) of the Act. The 6-month statute of limitations does not begin to run ''until there is either actual or constructive notice of the alleged unfair labor practice.'' *Mine Workers Local 17*, 315 NLRB 1052 (1994). In other words, ''until the aggrieved party knows or should know that his statutory rights have been violated.'' *John Morrell & Co*., 304 NLRB 896, 899 (1991). ''The cause of action accrue[s] no later than the time when plaintiffs knew or reasonably should have known that such a breach . . . had occurred.'' *Cohen v. Flushing Hospital*, 150 LRRM 2585, 2587 (2d Cir. 1995).

The alleged unfair labor practice occurred on September 14, 1992, when Respondent referred Strauss to a light duty assignment at the Coliseum. Respondent adduced much evidence to the effect that the assignment was a matter of common knowledge among its members, and that specific conversations were had between Bartlett and certain union members, in which Bartlett was allegedly informed of Strauss' assignment shortly after it had been made. I do not find it necessary to discuss those conversations, which were denied by Bartlett.

Rather, I find that by her testimony, as early as June 29, 1993, she was told by three different union members at the runoff election that Strauss had been referred to a light duty job at the Coliseum. She was thus put on notice that an unfair labor practice had occurred. Her testimony that she did not believe the members does not ring true. First, if she did not believe them and thought that what she heard was just good-natured teasing among electricians, as she testified, she would have dismissed their comments, and would not have bothered to confirm the ''rumor.''

However, she apparently gave some credence to what she was told, and attempted to verify the reports by calling the union office as set forth above, and asking to speak with plant. Her attempts, however, fell far short of her obligation to satisfy the requirements of Section 10(b).

Thus, she could have sought out union officials on the night of the runoff election. She also could have left a message when she phoned on about July 1. Her efforts thereafter, looking for, but not finding Plant at the conclusion of the July 13 meeting, and phoning the Union a couple of times from July 13 to August 10 did not satisfy her obligation to exercise ''reasonable diligence'' in confirming the rumor. *Moeller Bros. Body Shop*, 306 NLRB 191, 193 (1992).

I accordingly find and conclude that Bartlett's charge was not timely filed, pursuant to Section 10(b) of the Act.

In reaching this conclusion, I do not imply that the Section 10(b) period began to run only when she confirmed the rumor. It is clear that she possessed knowledge of the unfair labor practice at the runoff election of June 29. At that time, she was ''on notice of facts that created a suspicion sufficient to warrant requiring [her] to file [her] unfair labor practice charge within 6 months . . . to escape the 10(b) bar.'' *Safety-Kleen Corp*., 279 NLRB 1117 fn. 1 (1986).

She was aware of the facts—that Strauss was referred to a light duty job at the Coliseum, and she was aware that her rights were violated by virtue of those facts—immediately on learning of the referral she protested that she should have been referred ahead of Strauss, and that the employment managers had assured her that she would be the first referred.

Moreover, although Bartlett may not have believed the rumor told her on June 29, she acted almost immediately in an attempt to confirm it, and thus she harbored a suspicion that the assignment to Strauss was indeed true. This suspicion required that she file a charge within 6 months of June 29, that is from June 29 to December 29.

After hearing from union members on June 29 that Strauss had received a light duty assignment at the Coliseum, Bartlett was told of that referral by union officials on August 10 and in October. The officials thereby officially confirmed the rumor on August 10 and in October. Thus, on August 10, Plant told her of the Strauss referral, and in October, she met with Business Representatives Loughney, Fiore, and plant, who again confirmed the Strauss light duty referral, and during which meeting she protested that she had been improperly bypassed. Nevertheless, a charge was not filed until 5 months after the August 10 revelation.

Accordingly, the 10(b) period began to run at the latest, on June 29, 1993, when Bartlett possessed facts which were sufficient to create a suspicion that an unfair labor practice had occurred. She was required to have filed a charge within 6 months of that time, by December 29, 1993. She had ample notice, both through rumors, and then through official verification, during the 10(b) period that an unfair labor practice had occurred. Nevertheless, a charge was not filed within that period. Inasmuch as the charge was not filed until January 10, 1994, it must be dismissed as untimely.

The General Counsel argues that the 10(b) period began to run when the referral was verified by a union officer. He seeks support for this proposition that Business Manager Lindsay had told Bartlett not to believe rumors but to check with a union official. If this were the standard, the 10(b) period could be tolled indefinitely, despite the fact that the Charging Party had knowledge of the unfair labor practice, simply by the individual's not seeking verification from a union official. Here, the situation is quite different. Bartlett possessed knowledge of the unfair labor practice, but did not exercise reasonable diligence in filing the charge within the time limit.[4]

The General Counsel argues further that Bartlett was justified in not filing the charge within 6 months of June 29, because she was unable to substantiate the accuracy of the rumor with Plant until July 13, which was 6 months before she filed and served the charge. I do not agree. First, Bartlett

[4] *Plumbers & Steamfitters Local 40*, 242 NLRB 1157 (1979), cited by the General Counsel, is inapposite. The charging party's name was removed from the dispatch list without his knowledge, and thus the 10(b) period did not begin to run until he possessed such knowledge.

denies speaking to Plant on July 13, and Plant does not recall whether he spoke to her in May or July. Second, from June 29 to July 13, Plant was in his office on virtually all business days and, if he was out, a message could have been left for him. In addition, other union officials were available during all that time.[5]

I accordingly find and conclude that the charge filed on January 10, 1994, was untimely, and that the complaint must be dismissed.

### 2. The Merits of the Strauss Referral

In the interest of completion, and in the event that the Board does not agree with my 10(b) findings, I will discuss the merits of the referral of the light duty job at the Coliseum.

The complaint alleges that the referral was unlawful inasmuch as Bartlett and others were improperly bypassed because (a) they held higher positions on the slot and chronological lists than Strauss, and (b) Strauss was and continues to be a member of Respondent's executive board, and because he was appointed and thereafter elected as vice president of Respondent.

Respondent argues that the referral of Strauss was proper and asserts that Bartlett was properly bypassed, because she was (a) unavailable for work because of her disability and did not notify Respondent that she was available for light duty work and (b) physically unable to perform the light duty assignment at the Coliseum.[6]

### 3. The Referral

Bernard McCavanaugh was employed at the Coliseum for 23 years. At the time of his resignation from that job and retirement in June 1992, he was the shop steward and a union officer.

On learning of McCavanaugh's decision to retire, Lance Elder, the general manager of the Coliseum, notified Union Business Manager Lindsay that he wanted a replacement for McCavanaugh. Elder told Lindsay that he wanted someone ''highly qualified, confident and experienced.''[7]

Lindsay decided that the job would be classified as ''light duty'' and called Strauss, a union executive board member and a personal friend, inquiring whether he could perform such work at the Coliseum. Strauss called his physician, and was given medical approval to take the job. Lindsay then called union member and Coliseum Foreman Kevin Costello and asked him whether the job could be performed by a person in ''light duty'' status. Costello testified that he ''bristled'' at the suggestion, and was told that the man's only disability was that he could not do overhead work, and there was a limit to the mobility of one arm. Costello said that the job might be performed by such a person, and said that he would try the man, and that if it did not work out, he would not permit it.

On the next workday, Lindsay told Employment Manager Loughney to refer the next eligible person who was eligible for light duty to such an assignment at the Coliseum.

Loughney looked at the slot list, and saw no notations of employees eligible for light duty. At that time, employees in the slot system who were disabled had their employment cards in a group in a file drawer labeled ''disability'' situated in another room. Their names were not on the daily slot list, because they were not available for immediate employment, and their cards were not consulted by him in making referrals. According to Loughney, such employees must indicate their availability, and eligibility for light duty assignment or any assignments, by notifying the employment manager of their availability for work. Otherwise, their names do not appear on the slot list. Accordingly, Bartlett, who was in the slot system, was not on the daily slot list because she was listed as disabled, and was bypassed in favor of Strauss. According to Loughney, she did not advise him of her availability to work.

Loughney stated that when he had to fill a job, he consulted the slot and chronological lists for that day. Those employees who were on disability were listed on cards in another room, as set forth above. Regarding this referral, Loughney stated that he never looked in that drawer and did not know whose card was there, nor was he aware that any cards were located in that drawer at that time.

### 4. Bartlett's Availability

Respondent argues that inasmuch as Bartlett was on disabled status, she was required to notify its officials that she was available to return to work either on an unrestricted basis or for light duty jobs.

As noted above, Bartlett declined a light duty job at the courthouse in April 1992. She told Employment Manager Bub that she could not accept that job because of the presence of her boyfriend's estranged wife. Bub wrote on her employment card that she ''can't do light duty right now.'' Bub's reason for calling her for that assignment was that he had not heard from her in quite a while and wanted to check her status, see about her condition, and see if she was available for a light duty job. Despite this testimony, which seemed to imply that he was simply calling to check on the status of her disability, I find that he was actually calling to refer Bartlett to a light duty job.

Loughney, who replaced Bub as employment manager, stated that Bartlett never told him that she was available for light duty work. However, he admits having a conversation with Bartlett at a union meeting during the period August through November 1992, at which she asked about the possibility of sharing a light duty job with another person.[8] ''She thought that maybe you could break it down where two people could get light duty.'' Loughney replied that he doubted

[5] The General Counsel argues that Plant admitted confirming the Strauss referral on July 13. However, Plant testified that he did so either at the May or July union meeting. As set forth above, I am basing my decision on Bartlett's testimony that she did not speak to Plant at the July meeting.

[6] I will not discuss Bartlett's alleged physical inability to perform the work. Her physical condition was not considered in bypassing her in favor of Strauss. In fact, she was not even considered as being eligible for the referral, because her name was not on the slot list that day.

[7] Lindsay credibly testified that the call was properly made to him and not to the employment manager, because he had retained his responsibility for the Coliseum, which he had for many years, prior to his becoming the business manager.

[8] I credit Bartlett's testimony that this conversation occurred in July 1992.

that an electrician working 35 to 40 hours would want to share that time with anyone.

I do not credit Loughney's testimony that in September 1992 he was not aware that Bartlett was interested in or available for a light duty referral. This conversation clearly established that she was. His testimony that her mention of this was ''probably just something to keep in mind . . . to see if something could be done on it'' or a ''suggestion . . . an idea . . . for the good of the union and her fellow brothers and sisters'' does not withstand scrutiny.

Respondent claimed knowledge of Bartlett's physical condition, in part through communications by Bartlett to the welfare fund, specifically her June 22, 1992 letter to the welfare fund which stated that she had been unemployed due to a back injury since December 1989, and through the union trustees of the welfare fund. Inasmuch as Loughney was the assistant administrator of the electrical industry board which controls and administers the benefit funds in behalf of Respondent, he must have been aware of her physical condition. In view of that, her comments concerning the possibility of sharing a light duty job could not have been viewed by him as a theoretical proposition. Why would she be asking specifically about sharing a ''light duty job'' if such a position did not apply to her?

### 5. Respondent's Obligation to Refer Bartlett

Even assuming that Bartlett did not notify Respondent that she was available for a light duty assignment, it was incumbent on the Union, as the operator of an exclusive hiring hall, to inquire as to her availability for such a referral.

Respondent argues that Bartlett's failure to advise it of her availability for work precluded her from being referred, since her employment card was among those of the disabled workers who remained in that category and allegedly ineligible for referral until they informed Respondent of their availability.

However, as Bub testified, Bartlett's card was in the disabled category and file at the time that he called to refer her to the light duty job at the courthouse. His explanation that he was simply calling because he had not heard from her in a while and sought to check on her condition is not credible. He called to refer her to the courthouse job. She rejected the job. Had she agreed to accept the referral immediately, it is clear that she would have been assigned to that job.

Bub testified that when he called Bartlett in April concerning the courthouse job, she told him that she would have to check with her physician and call him back, but then immediately asked for the location of the job and Bub told her. She replied that she could not take the job, because her boyfriend's wife worked there. Bub testified that he expected a call from Bartlett as to her physical ability to accept the job, and implied that had he received such a call that she was able to work, he would have removed her card from the disabled file.

However, it is clear that once she refused the job for reasons unrelated to her physical ability to work, her initial offer to call Bub regarding her ability to work was rendered moot. Her purpose in offering to call Bub was to tell him whether she could physically perform that job, but since she declined it, her ability to perform it was irrelevant.

There was no explanation as to why Bub consulted her card which was in the disabled file and called her for a light duty job, and Loughney did not. Loughney was not even aware that there were any cards in that drawer.[9] The cards were in the same place. Bub consulted them and properly attempted to refer Bartlett, and Loughney did not.

Accordingly, I do not accept Loughney's testimony that if Bartlett had called him at any time prior to the Strauss referral, and said that she was available for work, he would have referred her to work ahead of Strauss. Bub needed no such call when he phoned to refer her to the courthouse job, and could not have expected a followup call as to her physical ability to perform it since she had already turned down the courthouse job.

Loughney's testimony does, however, establish that Bartlett was ahead of Strauss for referral to a light duty job, which was indeed the case since she was eligible for a light duty job, and was on the slot list from which referrals are made before those to workers on the chronological list, where Strauss' name was listed.

As the operator of an exclusive hiring hall, Respondent owes a duty of fair representation to members using the hall. As part of that duty, Respondent has an obligation to operate the hall in a manner that is not arbitrary or discriminatory, since the Act prohibits a union from adversely affecting the employment status of someone it represents for discriminatory, arbitrary, or irrelevant reasons. Respondent has a duty to represent all individuals who seek to utilize the hall in a fair and impartial manner. Any departure from established procedures resulting in a denial of employment constitutes inherently discriminatory conduct. *Iron Workers Local 118 (California Erectors)*, 309 NLRB 808, 811 (1992).

It is clear that Bartlett was entitled to be referred ahead of Strauss to the light duty assignment to the Coliseum. She was eligible for such an assignment, and since she was on the slot list, she was entitled to be called ahead of Strauss, who was on the chronological list. ''Employee discrimination occurs when a labor organization operating an exclusive hiring hall pursuant to a collective-bargaining agreement favors one prospective employee over another for dispatch, contrary to nondiscriminatory contractual requirements.'' *Teamsters Local 186 (Associated General Contractors)*, 313 NLRB 1232, 1234 (1994).

The fact that Bartlett's employment card was in the group of cards located in a file drawer of disabled workers should not have caused her to be ineligible for assignment. Bub called her for an assignment notwithstanding that her card was in that location. Loughney should have done the same.

I accordingly find and conclude that the referral to Strauss was improper and violative of Section 8(b)(1)(A) and (2) of the Act because Strauss' referral was an arbitrary departure from the hiring practices applied by Respondent. Strauss was not next in order for referral to a light duty job, but rather was referred out of order. As the operator of an exclusive hiring hall, Respondent was obligated to refer employees in order, based on their positions on the slot and chronological lists, as had been its practice. By referring Strauss ahead of Bartlett, Respondent unlawfully departed from its established hiring hall rules which it had applied. *Painters Local 1115 (C & O Painting)*, 312 NLRB 1036, 1040 (1993).

[9] Accordingly, the fact that in April 1992 her card bore the notation ''can't do light duty right now'' did not affect Loughney's decision not to refer her since he did not look at that card. Further, her rejection of the referral in April had no bearing on her willingness to accept a referral in September.

## Conclusion

Pursuant to the discussion, infra, I find and conclude that Bartlett's charge was untimely, and accordingly the complaint was barred by Section 10(b) of the Act. I therefore find that no violation of the Act has been committed and recommend that the complaint be dismissed.

## CONCLUSIONS OF LAW

1. Spectacore Management Group a/k/a SMG is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Local 25, International Brotherhood of Electrical Workers, AFL–CIO is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent has not engaged in unfair labor practices within the meaning of Section 8(b)(1)(A) and (2) of the Act in any manner as alleged in the complaint.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[10]

## ORDER

It is ordered that the complaint be dismissed in its entirety.

[10] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.